



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

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February 13, 2018

Dr. Steven Leath  
President  
Auburn University  
107 Samford Hall  
Auburn, Alabama 36849

RE: OCR Complaint No. 04-17-2242  
Resolution Letter

Dear Dr. Leath:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on April 24, 2017, against Auburn University (University). The complaint alleged that the University discriminated against an applicant (Applicant) on the basis of disability (seizures) when it denied him re-admission on April 19, 2017.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA); and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §12131 *et seq.*, and its implementing regulation, 28 C.F.R. part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of FFA from the Department and a public entity, the University is subject to Section 504 and Title II. Accordingly, OCR has jurisdiction over the University. Additional information about the laws OCR enforces is available on our website at [www.ed.gov/ocr](http://www.ed.gov/ocr).

OCR opened an investigation of the legal issue of whether the University discriminated against the Applicant on the basis of disability (seizures) when it denied him re-admission on April 19, 2017, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.42 and 104.43, and Title II and its implementing regulation at 28 C.F.R. §35.130.

Prior to the completion of OCR's investigation, the University asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual*.. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

### **Legal Standards**

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

The Section 504 implementing regulation at 34 C.F.R. § 104.42(a) prohibits a postsecondary institution from denying a qualified disabled person admission on the basis of disability or from subjecting him or her to discrimination in admission or recruitment.

In addition, the Section 504 implementing regulation at 34 C.F.R. § 104.42(b)(4) prohibits a postsecondary institution from making a pre-admission inquiry as to whether an applicant for admission is a disabled person. However, after admission, the institution may make inquiries on a confidential basis as to any disabilities that may require accommodation. The exception at 34 C.F.R. § 104.42(c) permits an institution to make a pre-admission inquiry if it is taking remedial action to correct the effects of past discrimination pursuant to 34 C.F.R. § 104.6(a) or when the institution is taking voluntary action to overcome the effects of conditions that resulted in limited participation of disabled individuals in its educational programs or activities.

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability.

When investigating an allegation of different treatment based on disability, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the University treated the Complainant less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the University had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the University is a pretext, or excuse, for unlawful discrimination.

### **Investigation to Date**

The Applicant previously attended the University in the 1980's and applied for readmission on May 24, 2016. The Applicant was initially informed he was admitted. However, when the Applicant attempted to enroll in classes on April 19, 2017, the University informed him that he would not be permitted to enroll. According to the University's re-admission policies, the Applicant was required to establish certain factors prior to readmission and failed to do so. However, the Applicant had already received an admission letter accepting him, and it is not clear if and how the requirements had been communicated to the Applicant.

### **Resolution**

The University signed the enclosed Resolution Agreement on February 8, 2018, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issue raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact Edget Betru, the OCR investigative attorney assigned to this complaint, at 404-974-9351 or [edget.betru@ed.gov](mailto:edget.betru@ed.gov).

Sincerely,

Wendy Gatlin  
Compliance Team Leader

Enclosure